THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18465 of 2006 and 5050 of 2007

30.4.2007

Between:

Mummadireddi Rami Reddy, S/o.Boreddy

… Petitioner

AND

The State Election Commission, Andhra Pradesh, Hydeabad, represented by its State Election Commissioner, 3rd Floor, Buddha Bhavan, M.G.Road, Secunderabad And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18465 of 2006 and 5050 of 2007

COMMON ORDER:

This common order shall dispose of these two writ petitions as the dispute is in relation to the election conducted to the office of the Sarpanch of Rampadu Gram Panchayat of Kasinaina Mandal in Kadapa District. In W.P.No.18465 of 2006, one Busireddy Rajanarayana Reddy is sixth respondent. He filed the other writ petition being W.P.No.5050 of 2007. For the sake of convenience, parties shall be referred to by their status in W.P.No.18465 of 2006.

In the election to the office of the Sarpanch, petitioner and sixth respondent contested and sixth respondent was declared elected. It appears that in three wards of Papireddyvaripalle village, part of the Gram Panchayat, 100% votes were polled. Petitioner therefore sent a complaint on 03.8.2006 by way of facsimile to the second respondent alleging that the votes of dead persons and NRIs were also cast in the three wards. In response thereto, first respondent send a fax on the same day to the District Collector to take necessary action as per the Rules. Alleging that the District Collector, second respondent herein, did not initiate immediate necessary action, W.P.No.18465 of 2006 was filed seeking a writ of Mandamus declaring the action of the second respondent in not taking action as per the communication of the first respondent.

The W.P.No.18465 of 2006 was filed on 04.9.2006. This Court ordered notice before admission on 05.9.2006 and invited affidavits from the respondents. When the matter is pending, petitioner moved Election Tribunal-cum-Court of Junior Civil Judge, Badwel, by filing E.O.P.No.3 of 2006 assailing the election of sixth respondent as illegal. He also filed I.A. No.608 of 2006 to call for the ballot boxes and other election material. By an order dated 08.2.2007, learned Election Tribunal direction production of ballot boxes and material used in the

election allegedly for better adjudication of the case. Assailing the same, sixth respondent filed W.P. No.5050 of 2007.

After hearing learned Counsel for petitioner, learned Counsel for sixth respondent and learned Standing Counsel for Election Commission, this Court is of considered opinion that scope of adjudication is very limited. Admittedly, petitioner preferred Election O.P. under Section 233 of Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity) and the same is pending. Therefore, whether 100% polling in three wards of Papireddyvaripalle village amounts to improper reception of votes or not is a matter for adjudication and trial. This matter has to be gone by Election Tribunal. Insofar as the order of the Tribunal in I.A.No.608 of 2006 is concerned, it is well settled that though the Returning Officer, who is a party to the Election Tribunal, is expected to produce election material as and when summoned, the Election Tribunal ordinarily is precluded from opening the ballot boxes or ordering recounting unless there are strong grounds for doing so (see **Ram Sewak Yadav v Hussain Kamil Kidwai**[1], **T.Penchalaiah v Election Court**[2] and **Siraj Quadri v Election Tribunal-cum-Senior Civil Judge, Adilabad**[3]). Mere allegation of improper reception or improper rejection of votes or impersonated votes etc., in the absence of proof would not give jurisdiction to the Election Tribunal to order recounting. These observations would be sufficient redressal for both the parties.

The two writ petitions are accordingly disposed of, without expressing any opinion on the question raised by the unsuccessful candidate, with an observation that the Election Tribunal may proceed with the trial and dispose of E.O.P.No.3 of 2006 within a period of eight weeks from the date of receipt of a copy of this order excluding court vacation period. No costs.

(**V.V.S.RAO, J**)

April 30, 2007.
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[1] AIR 1964 SC 1249

[2] 1990(1) ALT 669

[3] 2002 Suppl (2) ALD 116